THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 1291 OF 2005

Dated: 22nd November, 2005

Between:

Apartment Builder Association, Visakhapatnam

Rep. by its Secretary M.V.V.Satyanarayana

…Petitioner

A N D

The Viakhapatnam Municipal Corporation,

Rep. by the Commissioner, Visakhapatnam

And another

…Repondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 1291 OF 2005

O R D E R :

1. This writ petition has been filed by the Apartment Builders Association, Visakhapatnam questioning the validity of the G.O.M.No.302, M.A., dated 3-8-2004 and G.O.Ms.No.506 M.A. dated 3-12-2004 and endorsement B.A.No.11933/04/ACP-II, dated 25-11-2004.

2. Two G.Os referred above are issued by the Municipal Adminitration and Urban Development (M) Department. The Memo is issued by the Visakhapatnam Municipal Corporation. Under the G.Os referred above installation of Solar System is insisted for construction of multi-storied buildings and the developers/builders owners of the building are required to furnish a refundable performance guarantee in each till the solar panels are installed.

3. Heard learned counsel for the petitioner and learned Standing Counsel appearing for the 1st respondent and learned Government Pleader for Municipal Administration and Urban Development appearing for Respondent No.2.

4. The issue involved in this writ petition is very simple, whether the Government can insist installation of Solar System as a condition precedent for considering the sanction of permission for construction of multi-storied building. For better understanding, I may extract the relevant portion of the earliest G.O. i.e. G.O.Ms.No. 302 M.A. dated 3-8-2004.

> "*Government after careful examination of the matter have decided to make use of solar energy for advertisement hoardings/street lights and hot water as mandatory to conserve conventional electrical energy. Therefore, the following instructions are issued to all commissioners of Municipal Corporation /Municipalities, Vice-Chairmen of Urban Development Authorities of the State:*
>
> i. *All the Municipal Commissioners/Vice-Chairmen of Urban Development Authorities shall take immediate action for installation of solar system on the existing Municipal buildings/Urban Development Authority Buildings and the new building being built by the Urban Local Body concerned and shall use energy efficient lamps:*
>
> ii. *The conventional lights of advertisement hoardings shall be replaced by solar photo voltaic power at the costs of the franchisee.*
>
> iii. *Conventional lights of all street lights (upto 20 feet height) shall be replaced by solar photo voltaic power.*
>
> iv. *Clearance of plan for the proposed construction of hospitals, nursing homes, hotels, guest houses, lodges and multi-storied buildings shall only be*

given (a) if they have a provision in the building design itself for an insulated pipe line from the roof top in the building to various distribution points where hot water is required and the building must have a provision for continuous water supply to the solar water heating system and should also have open space on the roof top which receives direct sunlight; and (b) if they have a provision to make use of energy efficient lamps. All new buildings of the above category must complete installation of solar water heating system and energy efficient lamps before obtaining necessary license to commence their business.

3. All Commissioners of Municipal Corporations/Municipalities/Vice-Chairmen of Urban Development Authorities are requested to follow the above instructions scrupulously and contact, Non-Conventional Energy Development Corporation of Andhra Pradesh, Hyderabad or the concerned District Manager NEDCAP Limited for necessary guidance/technical advise in this matter"

5. Learned counsel for petitioner submits that installation of Solar System is not contemplated either under the Provisions of Hyderabad Municipal Corporation Act or Municipal Corporation Building bye laws 1981 and therefore, the two G.Os. and the Memo impugned in the writ petition are liable to be set aside. He took me to Section 428 and 429 of the Hyderabad Municipal Corporation Act, 1955 and bye laws 3 and 4 of Hyderabad Municipal Corporation Buildings Bye Laws, 1981. He also place reliance on the decisions of a Division Bench of our High Court in ***District Collector, Hyderabad Vs. N.Krishna Mohan,*** wherein it has been held as follows:

"*For the purpose of this case, it is sufficient to note that when once the petitioners established their possession and enjoyment of the land in question, the 2nd respondent-MCH should have granted permission in favour of the petitioners for construction of buildings instead of driving them to 1st respondent-Collector to obtain No Objection Certificate. Obtaining of No Objection Certificate arises only when any law presupposes. Mere circular or an executive order informing the petitioners to obtain No Objection Certificate before asking for conversion of land etc., have no legal sanctity, because there*

is no such statutory provision which compels the MCH to insist a person seeking permission to construct a building to obtain and produce No Objection Certificate from the Collector. The 2nd respondent when directed the petitioners to obtain NO Objection Certificate, failed to exercise its power conferred on it. Earlier orders passed by the Director of Settlements, Board of Revenue and also the Commissioner of Survey, Settlements and Land Records should not have been lightly brushed aside by the District Collector. Further he has no appellate power to comment upon the correctness of the orders passed by the other authorities. He is not a civil Court to give a finding on the title to the property. If he had doubted the petitioners' title to the property, nothing prevented him to initiate proceedings before appropriate forum. The act of the District Collector refusing to issue NO Objection Certificate to the petitioners is quite arbitrary and illegal"

.

6 . Learned Standing Counsel appearing for the 1st respondent submits that the provisions of Hyderabad Municipal Corporation Act as well as Hyderabad Municipal Corporation Building Rules are silent with regard to the installation of the solar system as a condition precedent for sanction of permission for construction of multi-storied buildings. The Government is empowered to give such directions in exercise of power conferred under Section 679-E of Hyderabad Municipal Corporation Act, 1955. A further submission has been made that the Government issued the above referred two G.Os. in exercise of powers under Section 679-E and they are not inconsistent with any of the provisions of the Hyderabad Municipal Corporation Act or Hyderabad Muncipal Corporation Building Rules bye laws.

7. Section 428 of the Hyderabad Municipal Corporation Act obligates every person, who intends to erect a building, shall give to the Commissioner notice of his said intention in a form, obtained for this purpose under Section 435, specifying the position of the building intended to be erected, the description of building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection. Under Section 429 of Hyderabad Municipal Corporation Act, 1955, Commissioner may require plans and other documents to be furnished. The documents which are required to be furnished are detailed in the provision itself and need no elaboration. Bye law 3.1 deals the procedure for obtaining building permit. Bye law 4 deals with information required to

accompany application for building permit. By referring these provisions, the learned counsel appearing for the petitioner submits that the petitioner is not required to install a solar system and thus insisting of No Objection Certificate from the NEDCAP is not legal and proper.

8. The contention of the learned counsel prima facie appears sound, but on close scrutiny of the provisions of Hyderabad Municipal Corporation Act, I do not detain myself long to reject his contention. It is suffice to refer Section 679-E of the Hyderabad Municipal Corporation Act, 1955 which reads as follows.

> *"679-E. Power to give directions;- The Government may from time to time give such directions not inconsistent with the provisions of the Act or the rules made there under to the Corporations as it may consider necessary for carrying out the purposes of this Act."*

9. The Governmental orders referred above detail the circumstances under which installation of solar system came to be insisted for sanction of permission for construction of multistoried building. The above referred G.Os are within the competency of the State Government.

10. Therefore, I do not see any merit in the writ petition and accordingly the same is dismissed. No order as to costs.

_____

Justice B.Seshasayana Reddy

22nd November, 2005

KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 1291 OF 2005

22nd November, 2005